Before the

# Federal Communications Commission

Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Applications for Consent to the Assignment | ) | MB Docket No. 05-192 |
| | ) | |
| and/or Transfer of Control of Licenses | ) | |
| | ) | |
| Adelphia Communications Corporation, | ) | |
| (and subsidiaries, debtors-in- | ) | |
| possession), | ) | |
| Assignors, | ) | |
| to | ) | |
| | ) | |
| Time Warner Cable Inc. (subsidiaries), | ) | |
| Assignees; | ) | |
| | ) | |
| Adelphia Communications Corporation, | ) | |
| (and subsidiaries, debtors-in- | ) | |
| possession), | ) | |
| Assignors and Transferors, | ) | |
| to | ) | |
| | ) | |
| Comcast Corporation (subsidiaries), | ) | |
| Assignees and Transferees; | ) | |
| | ) | |
| Comcast Corporation, Transferor, | ) | |
| to | ) | |
| Time Warner Inc., Transferee; | ) | |
| | ) | |
| Time Warner Inc., Transferor | ) | |
| To | | |
| Comcast Corporation, Transferee. | | |

## REPLY TO COMMENTS OF IBC WORLDWIDE, LTD.

IBC WORLDWIDE, LTD. ("IBC") herewith submits its Reply Comments with respect to the subject transfer proceeding.

IBC has reviewed the Comments submitted in this proceeding. Based on this review, IBC wishes to underscore certain of the critical problems raised by the proposed joint transfer applications as submitted on May 18, 2005 by Adelphia Communications Corporation ('Adelphia"), Time Warner Inc. ("Time Warner") and Comcast Corporation ("Comcast") (collectively "Applicants") which seek consent to transfer control of and/or assign various Commission licenses and authorizations pursuant to Section 214 and Section 310(d) of the Communications Act of1934, as amended.[1] It is IBC's belief that these fundamental problems which will have the effect of further concentrating control over the cable industry in Time Warner and Comcast give rise to the need to impose certain conditions on this transfer.

## The Cable Oligopoly

Serious public interest concerns are raised by further consolidation and control over cable subscribers by a classic oligopoly of multiple system operators (MSOs). The largest six MSOs (Comcast, TW, Cablevision, Cox, Charter, and Adelphia) currently control 85% of all US cable subscribers constituting the Cable Oligopoly. Of these top six companies, Time Warner and Comcast together control about one-half of the oligopoly subscribers. Concentration of control over US cable subscribers will clearly increase as a result of the proposed acquisition of Adelphia by Time Warner and Comcast.

If Adelphia subscribers are divided between Comcast and Time Warner, this will reduce the Cable Oligopoly to five major MSOs and will, as a result, further limit competition by content providers, advertisers, satellite operators, telcoms, other cable companies and all new technology providers.

## Impact on Hispanic Subscribers

Adelphia currently has a significant amount of US Hispanic Cable subscribers, primarily in the Los Angeles and Miami markets. US Hispanics are a valuable growth opportunity for advertisers and MSOs. The control of Time Warner and Comcast over ethnic content supply from independent suppliers represents an additional complication raised by the proposed.

Comcast acquired AT&T Cable (formerly TCI Cable) in 2003. This transaction resulted in the significant loss of employment through consolidation, and provided Comcast with approximately 1.5 million US Hispanic cable subscribers. As a result, Comcast now has about 2 million US Hispanic cable subscribers, about 36% of this subscriber universe. As a result, Comcast has become a critical "Gatekeeper" for any new Hispanic content.

Comcast provides US Hispanic program content by "backhauling" existing networks from Latin America. This strategy is cost effective for Comcast. However, US Hispanic content producers have minimal access to Comcast Hispanic audiences.

## Increase of Vertical Integration

Comcast business strategy for appreciation of shareholder value is clearly to grow as a vertically integrated content and transmission business for traditional and new media. Its most recent failure to acquire Disney/ABC is a prime example of this strategy.

---

[1] *See* 47 U.S.C. §§ 214, 310(d).

Acquisition of Adelphia subscribers in key markets, especially the prized US Hispanic subscribers, is consistent with Comcast's long term goal to achieve control over content.

## The Cable Oligopoly as Gatekeepers

The Gatekeeper issue defacto raises serious restraint of trade issues by enabling the Cable Oligopoly to exercise control over ALL CONTENT PROVIDERS on the issue of carriage or non-carriage of content. The Paramount Case of l948 constituted recognition of a then existing similar oligopoly power of major film studios over movie theatres. The Court agreed that end to end control of content production, distribution, and exhibition was not in the public interest. *U.S. v. Paramount Pictures, Inc.* et al., 334 U.S. 131 (1948).

The current content carriage issue is the direct result of the diversification of cable companies from "transmission" service to a combination of "transmission with proprietary content." The cable industry was developed as CATV ("community antenna television") to provide antenna service for communities that were not able to receive television content by means of over the air transmission. The necessary transmission service rights were granted to cable companies under federal law and defined in local government franchise agreements. Building on this base, the cable industry – especially the Cable Oligopoly- has coupled the transmission service with proprietary content to create today's expanded cable TV service.

With this increased market power, the current Cable Oligopoly generally limits opportunities for new content providers to gain carriage by establishing a "performance" condition to obtain "retransmission consent" agreements. The performance condition is based upon a content provider making available proprietary content for Video on Demand application on cable systems under a shared revenue model with the MSO.

*If* the content, in competition with thousands of alternative content choices including major studio product, develops subscriber demand defined by purchases, *then* the MSO will collect its share of such revenue, and provide carriage for the content provider. The typical carriage agreement is for 10 years, and provides that the MSO pay to the content provider a cents-per-subscriber fee.

This fee is typically $0 in Year One in exchange for 10 year carriage. The content provider must solicit each cable system to aggregate MSO - wide coverage of subscribers under a so-called "hunting license." This limits coverage of audience needed to solicit advertiser revenue to supplement the cents-per-subscriber license fees. In summary, the content provider today is handicapped by the terms of the cable carriage agreement. Meanwhile, the MSO benefits from the new content which can be added to basic / digital tier and be used to increase subscriber monthly charges.

The FCC determination in March 2005 not to mandate "must carry" by cable systems of five new digital broadcast channels actually increased the effective power of the Cable Oligopoly to control program content. Major entertainment companies may be able to obtain cable system carriage agreements based on "retransmission consent" negotiations with MSOs. It is less likely that independent content providers will be able to compete under these conditions.

Thus, despite the technology advancements to provide a digital transmission platform, the ability of the public to receive increased channels will be limited to what content the Cable Oligopoly and other MSOs control by type, quantity, and price. This is particularly a critical element for the emerging ethnic audiences.

It should be noted that cable systems control access to approximately 70% of all US television households. Carriage of broadcast signals must depend upon cable systems to reach national audiences and provide a market economy for advertisers.

## Negative Effects of Adephia Acquisition Transaction

Clearly, significant structural and operational problems including increased control over program producer access to systems will result should Adelphia be subsumed into Time Warner and Comcast. This combination can be found to be in direct conflict with the benefits of a free market system and competition for all.

To counter these negative results of the proposed transfer, IBC argues that the Commission should condition the transaction so as to limit the gatekeeping power of Time Warner and Comcast. Indeed, as IBC has noted, there is no need for this Internet gatekeeping to continue with respect to the cable industry. All of this can be altered with a simple addition to the settop converters used by Time Warner and Comcast.

## Cable Internet Ready (CIR) Settop Converters

As IBC has demonstrated, the advances of technology have made it possible to make every cable TV box Internet accessible. With the insertion of a simple chip, every cablebox can become Internet ready and allow TV set reception of all visual and audio data distributed via the Internet. This will immediately open a path for all program suppliers into cable homes across the country, bypassing the Cable Oligopoly gatekeepers.

IBC's basic position is that if cable companies such as Adelphia, Time Warner and Comcast want to utilize this worldwide electronic medium to make ever increasing profits from the Internet, a free medium, then they should be mandated to provide a channel on the cable for the Internet access over television. Such an access channel would parallel similar pathways in computers and wireless devices. The advantages to be gained from such a Cable-Internet-Ready (CIR) settop box are substantial, including the following:

- The CIR will open the Internet to low income families that have television access available.
- The CIR will provide a low cost entree point for senior citizens.
- The CIR will provide a venue for an ever-expanding program production industry seeking access for their content.
- The CIR will provide immediate access to in-home television sets for the Homeland Security Agency, obviating the need to construct a new communications network to access the country's 85+ million cable TV homes.
- The CIR will expand and extend all types of communications – local, regional, national and international.

## CIR Transfer Condition

As IBC has previously noted, the advantages offered by CIR equipped cable systems are truly unprecedented. Consequently, IBC respectfully restates its request that all licenses and permits to be transferred pursuant to applications under review in this proceeding be conditioned on the following requirement:

> Within 12 months of the grant of the subject transfer applications, all settop converters used by the Transferee(s) shall Cable Internet Ready, i.e. converters shall be so equipped to provide at least one channel position for direct reception of the Internet by cable customers.

Respectfully submitted,

IBC WORLDWIDE, LTD.
1466 Broadway, Suite 905
New York, NY 10036

By /s/ Fank Liberman

Frank Lieberman
Its President.

Dated: August 4, 2005